



## H.R. 5658 – National Defense Authorization Act for FY2009

### EXECUTIVE SUMMARY

Chairman Ike Skelton (D-MO) introduced the Defense Authorization for FY2009 (H.R. 5658) on March 31, 2008. The House Committee on Armed Services approved H.R. 5658, as amended, by a vote of 61 to 0 on May 14, 2008. The bill will be considered on the floor under a structured rule on May 21-22, 2008.

H.R. 5658 would authorize funding for national defense programs in FY2009, including authorization for military operations in Iraq and Afghanistan. It also lays out the policy framework for the Pentagon for the coming year. The bill authorizes \$601.4 billion in funding for national defense programs in FY2009 – \$531.4 billion for 2009 Pentagon and Energy Department defense programs and \$70 billion to fund military operations in Iraq and Afghanistan through the beginning months of 2009.

Included in H.R. 5658 are provisions authorizing a pay increase of 3.9 percent for all military personnel before special pay or bonuses, and language blocking provisions sought by the Administration to raise \$1.2 billion by increasing fees, premiums, and drug co-payments for participants in the military's TRICARE health network.

The Ranking Member of the Armed Services Committee, Rep. Duncan Hunter (R-CA) supports H.R. 5658, as reported by the Committee, and feels that it reflects a strong and continued support for the brave men and women of the United States armed forces. However, Congressman Hunter did express serious concerns regarding cuts to missile defense, the Army's Future Combat System, and the failure to repeal the SBP-DIC offset to increase payments to military surviving children and spouses.

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### FLOOR SITUATION

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H.R. 5658 is being considered on the floor pursuant to a two part rule.

The first part of the rule sets the parameters for general debate. The rule:

- Provides two hours of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services.
- Waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI.
- Provides that no further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

The second part of the rule, expected to be reported May 21, 2008, will set the parameters for amendment debate.

The bill was introduced by Representative Ike Skelton (D-MO) on March 31, 2008. The House Committee on Armed Services approved H.R. 5658, as amended, by a vote of 61 to 0 on May 14, 2008.

The bill is expected to be considered on the floor on May 21-22, 2008.



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## BACKGROUND

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H.R. 5658 would authorize \$601.4 billion in funding for national defense programs in FY2009 – \$531.4 billion for 2009 Pentagon and Energy Department defense programs and \$70 billion to fund military operations in Iraq and Afghanistan through the beginning months of 2009.

The legislation authorizes \$10.2 billion for 2009 missile defense programs, which is about \$719 million below the level requested by the Administration. The bill authorizes \$341.2 million for the long-range missile defense system in Europe, which is more than 50 percent below the President's request.

*\*Note: The 2009 Defense Authorization bill passed by the Senate Armed Services Committee fully funded the President's request for developing anti-missile sites in Poland and the Czech Republic, but included similar conditions on funding.*

During Committee markup of the bill, several Republican amendments were offered, of which one was adopted. These amendments improved the bill by enhancing security clearance requirements for contractors and entities. Two amendments to restore funding for missile defense programs were rejected.

The Senate Armed Services Committee approved their version of the 2009 Defense Authorization bill (S. 3001) by a vote of 24-0 on April 30, 2008. The Senate version includes many of the same provisions as the H.R. 5658. Both versions authorize the Army to increase their number of active duty personnel to 532,400, which is 7,000 above 2008 authorized levels. The Marine Corps is authorized to add 5,000 personnel, totaling 194,000 active duty Marines.

Major differences between the House and Senate versions include funding levels for military war ships and air craft, missile defense, and future combat systems.

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## SUMMARY

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### **Title I – Procurement**

Authorizes appropriations for the Army:

- Aircraft: \$4,912,735,000
- Missiles: \$2,201,460,000
- Weapons and tracked combat vehicles: \$3,539,177,000
- Ammunition: \$2,294,791,000
- Other procurement: \$11,201,876,000
- Joint Improvised Explosive Device Defeat Fund: \$0

Authorizes appropriations for the Navy:

- Aircraft: \$14,627,274,000
- Weapons: \$3,575,482,000
- Shipbuilding and conversion: \$12,917,919,000
- Other procurement: \$5,461,926,000

Authorizes appropriations for the Marine Corps: \$1,296,327,000

Authorizes appropriations for the Navy and Marine Corp ammunition: \$1,222,712,000



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Authorizes appropriations for the Air Force:

- Aircraft: \$12,618,665,000
- Ammunition: \$934,478,000
- Missiles: \$5,536,728,000
- Other procurement: \$16,134,896,000

Authorizes appropriations for Defense-wide procurement: \$4,335,428,000

Authorizes appropriations for National Guard and Reserve Equipment: \$800,000,000

## Army Programs

- Only seventy-five percent of funds obligated for tactical radios may be obligated until the Army submits a report detailing the Army's fielding plans and whether they are properly aligned to create the future battlefield network envisioned by the Army.
- Only twenty percent of funds obligated for the Armed Reconnaissance Helicopter may be obligated until 30 days after the Department of Defense certifies to the relevant Congressional committees that the helicopter has satisfactorily completed a Limited User Test and has been approved to enter Milestone C. (Section 114)

## Navy Programs

- The bill authorizes the procurement of one Virginia-Class submarine and authorizes \$722 million in advanced procurement to enable the Navy to start procuring two VA-Class submarines FY2011.
- Requires the Secretary of Defense to report to the relevant Congressional committees on the plans for and cost of procurement of F/A-18E/F and EA-18G aircraft. The Secretary must make a recommendation regarding the authorization of a multiyear procurement contract for those aircraft.

## Air Force Programs

- Restricts the Secretary of the Air Force from retiring C-5A aircraft that would reduce the inventory below 111 until forty five days after the Secretary certifies that retiring the aircraft will not significantly increase operational risk of not meeting the National Defense Strategy and evaluates the life-cycle cost of the C-17 aircraft to replace the capability of the C-5A.
- Requires the Secretary to submit a report to Congress by December 1, 2008, that includes an examination of the processes by which KC-(X) requirements were established, a justification for the use of the KC-135R as the comparative baseline for the KC-(X) competition, and an evaluation of commercial derivative aircraft in the 750,000 pounds maximum gross take-off weight to the 1 million pounds maximum gross take-off weight range as a potential aerial refueling platform.

*\*Note: The KC-(X) is the name of the Air Force procurement program for the next generation aerial refueling tanker aircraft. On February 29, 2008, the Air Force awarded the \$40 billion contract for 179 new tankers to Northrup Grumman and EADS.*

## **Title II – Research, Development, Test, and Evaluation**

Authorizes appropriations of \$79.7 billion to the Department of Defense.



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Future Combat Systems (FCS): The bill decreases the Army's Future Combat System by \$233 million, from the President's request. The reductions focus on long-term components of FCS. The bill also includes a requirement that future budget requests must include separate, dedicated procurement lines for five elements of the FCS program, including FCS manned ground vehicles, FCS unmanned ground vehicles, FCS unmanned aerial systems, FCS unattended ground systems, and other FCS elements.

## Ballistic Missile Defense

- H.R. 5658 authorizes \$10.2 billion for missile defense programs in fiscal year 2009, which cuts \$719 million in funding from the President's request. This funding is critical for enabling our military to develop and field a robust, layered ballistic missile defense system.
- European Missile Defense Sites: The bill authorizes \$341.2 million for the long-range missile defense system in Europe, which is more than 50 percent below the President's request. The bill prohibits any funding for the long-range missile defense system in Europe until 1) Poland and the Czech Republic have signed and ratified the missile defense basing agreements and status of forces agreements needed for deploying the systems and 2) 45 days have passed since Congress receives the missile defense report required by the FY2008 National Defense Authorization Act (P.L. 110-181). Additionally, funds are prohibited until the Secretary of Defense certifies to Congress that the proposed missile defense system has successfully demonstrated a high probability of effectively accomplishing its mission.
- Aegis Ballistic Missile Defense: The bill authorizes \$1.2 billion for the Aegis Ballistic Missile Defense system, which is \$75 million more than requested by the President.
- The bill requires the Secretary of Defense to contract an independent study and assessment of concepts and systems for boost phase missile defense. The report to Congress is due by January 31, 2010.

## Title III – Operation and Maintenance

Authorizes appropriations of \$154,478,408,000 to the Department of Defense for operation and maintenance.

- **Energy Issues**: The bill requires an annual report regarding operational energy demands and an evaluation of progress in implementing the operational energy strategy and meeting the goals it established. It also requires studies on the use of solar energy to provide electricity at forward operating locations and on alternatives to reduce the life cycle emissions of coal-to-liquid fuels and potential uses of coal-to-liquid fuels to meet the Department's mobility energy requirements.
- **Armed Forces Readiness Assessment**: The bill requires the Comptroller General to submit a report to Congress analyzing the readiness status of the regular and reserve components of the Armed Forces.

## Title IV – Military Personnel Authorizations

Authorizes Armed Forces strengths for active duty personnel as of September 30, 2009, as follows:

- The Army, 532,400 (Increase of 7,000 from FY2008).
- The Navy, 326,323.
- The Marine Corps, 194,000 (Increase of 5,000 from FY2008).
- The Air Force, 317,050.



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The bill also sets new minimum active duty end strengths of the Armed Forces as of September 30, 2008, as follows:

- For the Army, 532,400.
- For the Navy, 326,323.
- For the Marine Corps, 194,000.
- For the Air Force, 317,050.

## Subtitle B – Reserve Forces

The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve company as of September 30, 2008, as follows:

- The Army National Guard of the United States, 352,600.
- The Army Reserve, 205,000.
- The Navy Reserve, 66,700.
- The Marine Corps Reserve, 39,600.
- The Air National Guard of the United States, 106,700.
- The Air Force Reserve, 67,400.
- The Coast Guard Reserve, 10,000.

The bill authorizes the following maximum number of reserve component personnel who may be on active duty or full-time National Guard duty during the fiscal year 2009 to provide operational support:

- The Army National Guard of the United States, 17,000.
- The Army Reserve, 13,000.
- The Navy Reserve, 6,200.
- The Marine Corps Reserve, 3,000.
- The Air National Guard of the United States, 16,000.
- The Air Force Reserve, 14,000.

The bill authorizes \$124, 659,786,000 for military personnel for fiscal year 2009.

## Title V – Military Personnel Policy

**Reserve Component:** The bill authorizes an increase in the number of active duty Marine Corps Reserve officers in the grades of majors and lieutenants.

- Increases the authorized maximum reenlistment term from six years to eight years.
- The bill authorizes the Secretary of Defense to establish programs to assist the spouse of the armed forces in attaining a degree or credential at an accredited college, university or technical school or for the educational prerequisites for professional licensure.

## Title VI – Compensation and Other Personnel Benefits

- **Pay and Allowances:** HR 5658 provides a 3.9% pay raise for all members of the armed forces in 2009.
- **Bonuses and Special and Incentive Pays:** The bill authorizes the extension of certain bonuses through December 31, 2009. This subtitle also provides for other bonuses relating to certain positions and officers.
- **Retired Pay and Survivor Benefits:** The bill does not repeal the SBP-DIC offset.



*\*Note: According to the Committee Republican Additional Views, "we regret and express our disappointment that the committee did not enact an amendment to increase payments to military surviving spouses and children by repealing the SBP-DIC offset or Widow's Tax. The amendment directed the chairman of the Budget Committee to use the authority in the House-passed fiscal year 2009 budget resolution to provide the mandatory and discretionary spending necessary to eliminate SBP-DIC offsets."*

- Creates a Resale Activities Review Board to make recommendations to the Secretary regarding sexually explicit material for sale or rental on military installations.
- Authorizes the Secretary of the Army to train civilians, directly or through a contractor, to recruit persons for enlistment in the Army and the Secretary would pay the individual for their recruiting.

## **Title VII - Health Care Provisions**

TRICARE is the Department of Defense's health care program for members of the uniformed services, their families, survivors, and retirees.

- Extends the prohibitions enacted in FY2007 and extended last year on increases to **TRICARE Prime and TRICARE Standard as well as on retail pharmacy cost share increases.**

*\*Note: According to the Republican Views of the Committee Report, to find offsets for the \$40 million cost of this provision "the House leadership suggested a budgetary gimmick that requires military retirees to take a cut of one percent in their retired pay for a month."*

- Prohibits the transfer or conversion of jobs performed by military medical or dental personnel to civilian personnel after October 1, 2008.
- Waives copayments for preventive services for certain TRICARE beneficiaries.
- Requires the Secretary to include a smoking cessation program under TRICARE.
- Establishes a new Center of Excellence in prevention, diagnosis, mitigation, treatment, and rehabilitation of hearing loss and auditory system injuries.

## **Title VIII – Acquisition Policy, Acquisition Management, and Related Matters**

- Following a ruling by the World Trade Organization that either or both of the United States or the European Union has provided illegal subsidies to a manufacturer of large commercial aircraft, the bill requires the Secretary of the Air Force to review the impact of illegal subsidies on the source selection for the KC-45 Aerial Refueling Aircraft Program. It then requires the Secretary to determine whether an illegal subsidy impacted the source selection process for the KC-45 sufficient to bring into question the fairness of the process and to offer a remedy to compensate for the effect of any such subsidy.
- The bill would authorize the Secretary of Defense to consider domestic industrial base impacts during source selection for a major defense acquisition program.
- The bill prohibits the Secretary of Defense from entering into certain procurement contracts with beneficiaries of foreign subsidies.



- The bill requires the Secretary of Defense to develop a standard policy aimed at preventing conflicts of interest by employees of DOD contractors that is similar to the policy for DOD civilian employees.
- The bill codifies elements of the National Industrial Security Program and requires additional measures to strengthen the ability of the Department of Defense to address industrial espionage.

## **Title IX – DOD Organization and Management**

- Redesignates the Department of Navy as the Department of the Navy and Marine Corps.
- Requires the Secretary of Defense to establish within the National Defense University a School of Nursing by July 1, 2010. It requires that no less than 25 students with a bachelor of science in nursing graduate in the first class not later than June 30, 2012, and no less than 50 in the second class, and 100 each year thereafter.
- Not more than 90 percent of funds obligated for operations and maintenance may be used until DOD submits a report describing the development assistance activities carried out by the U.S. Southern Command during FY2008 and planned for FY2009 and certifies that the activities are effective and necessary.

## **Title X – General Provisions**

- The bill requires separate display of budgets for Afghanistan and Iraq.
- Authorizes \$65 million during fiscal year 2009 for counter-narcotics activities and extends U.S. support to the governments of Guinea Bissau, Senegal, and Ghana. It also requires DOD to develop comprehensive counter-narcotics strategies for West Africa and MAGHREB and South and Central Asian regions.
- Requires a report on nonstrategic nuclear weapons owned or being developed by other countries. In addition, the report is required to examine the risks associated with the deployment, transfer, and storage of these weapons, as well as the potential for use by rogue states and terrorists.

## **Title XII – Matters Relating to Foreign Nations**

- **Bans Permanent Military Installations in Iraq and U.S. Control of Iraqi Oil:** The bill extends the prohibition on the establishment of permanent military installations in Iraq and on U.S. control over oil resources in Iraq.

*\*Note: The House has voted more than 11 times (six of which have been signed into law) on provisions stating similar policies, including a vote on the House version of the FY2008 NDAA.*

- Requires DOD to submit a report to Congress on the **status of forces agreements** between the United States and Iraq and how those agreements protect U.S. service members and other DOD personnel, relate to any security commitments to the Government of Iraq, and impact operations in Iraq.
- Requires DOD to develop a strategy to ensure that Provincial Reconstruction Teams in Iraq are supporting the goals of the coalition and to establish performance measures in meeting their work plans.



- Includes a sense of Congress that the command and control structure for military forces operating in Afghanistan (U.S. Forces and the NATO International Security Assistance Force) should be modified for better coordination and to achieve unity of command. It requires a report from the Secretary of Defense about the command and control structure for military forces operating in Afghanistan.
- **Sense of Congress and Congressional Briefings Regarding Iran:** Contains a sense of Congress that the U.S. Armed Forces should be returned to a state of full readiness so that they are fully prepared to execute the National Military Strategy, including the full range of contingencies that could occur in the Middle East region. In addition, it requires the Secretary of Defense to report to the congressional defense committees regarding the current and future nuclear weapons capabilities of Iran.
- Increases the amounts authorized for the Commanders' Emergency Response Program (CERP) for humanitarian and reconstruction needs in Iraq and Afghanistan to \$1.7 billion in FY2008 and \$1.5 billion in FY2009. It limits the FY2009 CERP amounts that may be obligated and expended in Iraq to twice the amount obligated by the Government of Iraq in calendar year 2008, thus encouraging the Iraqi Government to obligate more Iraqi money toward reconstruction, and allows the Secretary of Defense to waive this limitation to protect U.S. military and civilian personnel
- Includes several provisions that extend or expand DOD authorities to train and equip foreign forces so that the United States has more capable, interoperable military partners to combat terrorism and conduct stability or other military operations.
- Republicans successfully amended H.R. 5658 that would move toward limiting any foreign company improving China's satellite capability from conducting classified work for the Department of Defense.

### **Title XIII – Cooperative Threat Reduction**

- **Cooperative Threat Reduction Program:** HR 5658 would authorize \$445 million for the Cooperative Threat Reduction (CTR) program in FY2008. CTR funding was authorized at \$415.5 million in FY2006, \$372.3 million in FY2007, and \$398 million for FY2008.

When DOD began this program in the early 1990's, it focused on assisting Russia, Ukraine, Belarus, and Kazakhstan with the safe transportation, storage, and dismantlement of nuclear weapons. The program has since evolved to include efforts to encourage transparency and support military cooperation to prevent proliferation.

The bill expands the scope of programs for which CTR funding can be used. It also authorizes \$10 million for the development of new CTR initiatives and requires DOD to submit a strategy for these initiatives.

### **Title XV – Funding Authority for ongoing Military Operations:**

- Provides \$2.61 billion for the procurement of mine resistant ambush protected (MRAP) vehicles.

Additional funding highlights (*funding in millions*):

	Procurement	RDT&E	O&M
Army	\$2,208	\$0	\$37,363



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Navy & Marines	\$1,042	\$113	\$6,400
Air Force	\$6,125	\$72	\$5,000

Additional Programs of Note	Auth. Level
Iraq Security Forces Fund	\$1,000
Afghanistan Security Forces Fund	\$2,000
Military Personnel	\$1,194

## **Title XVI – Reconstruction and Stabilization Civilian Management**

The bill grants the President and the Secretary of State the authority to increase the abilities of U.S. civilians to provide foreign countries with stabilization and reconstruction assistance in times of crises. The bill codifies the Office of the Coordinator for Reconstruction and Stabilization, which has existed since 2004 within the Department of State, which has existed since 2004.

It authorizes the establishment of a Response Readiness Corps composed of U.S. governmental personnel to assist foreign countries in times of post-crisis stabilization and reconstruction and creates a Civilian Reserve Corps made up of non-federal volunteers who are also skilled and experienced in foreign stabilization and reconstruction. These volunteers are to be deployed upon the President's determination that to do so is in the interest of U.S. national security.

*\*Note: This provision is identical to the Reconstruction and Stabilization Civilian Management Act of 2008 (H.R. 1084) which passed the House by voice vote on March 5, 2008.*

## **Title XXI-XXVII Military Construction**

- **Authorizing Funding for Military Construction:** H.R. 5658 authorizes \$11.8 billion for military construction, \$9.46 billion for BRAC activities, and \$3.17 billion for family housing in FY2009.
- **Walter Reed Army Medical Hospital:** Restricts the Secretary of Defense from commencing the closure of Walter Reed or continuing with the construction at the National Naval Medical Center until the Secretary certifies to the congressional defense committees that certain conditions have been satisfied.

## **Title XXXI – Department of Energy National Security-related Activities**

- **Funding Authorization:** Provides authorization for \$16.2 billion for atomic energy defense activities. Specifically, this authorization includes \$9.3 billion for the National Nuclear Security Administration and \$6.9 billion for environmental and other defense activities.

### AMENDMENTS

*\*Note: Amendments will be made available after on May 21, 2008.*

### COST

According to the Congressional Budget Office, "CBO estimates that appropriation of the authorized amounts would result in additional outlays of \$596 billion over the 2008-2013 period. Including outlays from funds previously appropriated, spending for defense programs authorized by the bill would total about \$600 billion in 2009, CBO estimates. That figure, however, excludes outlays from the likely enactment of supplemental appropriations for 2008 that are not authorized by the bill. Including the



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effects of those additional supplemental appropriations for 2008 now being considered by the Congress, spending in 2009 would total more than \$630 billion. ([CBO Cost Estimate](#))

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## STAFF CONTACT

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